

EXECUTION VERSION  
May 10, 2002

**CONFIDENTIAL DOCUMENT  
REAL PROPERTY NEGOTIATION  
(CA GOVERNMENT CODE SECTION  
54956.8)**

**Attorney-Client Privilege  
(To be Removed Upon Execution)**

**AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE CITY OF TUSTIN, CALIFORNIA  
FOR THE CONVEYANCE OF A PORTION OF THE FORMER  
MARINE CORPS AIR STATION TUSTIN**

**AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE CITY OF TUSTIN, CALIFORNIA  
FOR THE CONVEYANCE OF A PORTION OF THE FORMER  
MARINE CORPS AIR STATION TUSTIN**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS .....	3
ARTICLE 2. NO COST EDC.....	5
ARTICLE 3. TRANSFER AND CONVEYANCE .....	5
ARTICLE 4. CITY SUBSEQUENT CONVEYANCE AND USE OF PROPERTY .....	7
ARTICLE 5. DISPOSAL OF GOVERNMENT PARCELS .....	8
ARTICLE 6. EASEMENTS .....	9
ARTICLE 7. CLOSING AND SETTLEMENT .....	9
ARTICLE 8. TIME OF THE ESSENCE .....	12
ARTICLE 9. ENVIRONMENTAL REPORTS.....	13
ARTICLE 10. DELIVERY OF PROPERTY DOCUMENTS.....	13
ARTICLE 11. USE OF PROCEEDS FROM SALE OR LEASE.....	13
ARTICLE 12. GOVERNMENT’S REPRESENTATION .....	15
ARTICLE 13. CITY REPRESENTATIONS.....	16
ARTICLE 14. ENVIRONMENTAL PROVISIONS .....	16
ARTICLE 15. COVENANT AGAINST CONTINGENT FEES .....	17
ARTICLE 16. NOTICES .....	17
ARTICLE 17. PRIOR LIABILITIES.....	18
ARTICLE 18. FINALITY OF CONVEYANCE .....	18
ARTICLE 19. AS IS WHERE IS .....	19
ARTICLE 20. GOVERNMENT’S COVENANTS .....	19
ARTICLE 21. LIABILITY FOR ENVIRONMENTAL CONTAMINATION.....	19
ARTICLE 22. SHORT FORM NOTICE.....	20
ARTICLE 23. MODIFICATION; WAIVERS.....	20
ARTICLE 24. FURTHER ASSURANCES.....	20
ARTICLE 25. DISPUTE RESOLUTION PROCEDURES .....	20
ARTICLE 26. SURVIVAL AND BENEFIT .....	21
ARTICLE 27. INTERPRETATION.....	22
ARTICLE 28. NON-DISCRIMINATION.....	23
ARTICLE 29. AVAILABILITY OF FUNDS.....	23
ARTICLE 30. TERMINATION AND REMEDIES FOR NONPERFORMANCE.....	24
ARTICLE 31. FAILURE TO INSIST ON COMPLIANCE.....	24
ARTICLE 32. MODIFICATION; WAIVERS.....	24

ARTICLE 33. COUNTERPARTS .....	25
ARTICLE 34. UTILITIES FOR GOVERNMENT PARCELS .....	25

## LIST OF EXHIBITS

DESCRIPTION OF PROPERTY AND DESCRIPTION OF GOVERNMENT PARCELS .....	A
---	---

DESCRIPTION OF PARCEL GROUPS.....	B
-----------------------------------	---

PARCEL GROUP I

PARCEL GROUP II

PARCEL GROUP III

PARCEL GROUP IV

### QUITCLAIM DEEDS

QUITCLAIM DEED A.....	C-1
-----------------------	-----

QUITCLAIM DEED B .....	C-2
------------------------	-----

QUITCLAIM DEED C .....	C-3
------------------------	-----

QUITCLAIM DEED D.....	C-4
-----------------------	-----

QUITCLAIM DEED E .....	C-5
------------------------	-----

QUITCLAIM DEED F.....	C-6
-----------------------	-----

QUITCLAIM DEED G.....	C-7
-----------------------	-----

QUITCLAIM DEED H.....	C-8
-----------------------	-----

RECORD OF DECISION.....	D
-------------------------	---

LEASE IN FURTHERANCE OF CONVEYANCE .....	E
--	---

### BILLS OF SALE FOR PERSONAL PROPERTY

BILL OF SALE FOR INITIAL PERSONAL PROPERTY.....	F-1
---	-----

BILL OF SALE FOR SUBSEQUENT PERSONAL PROPERTY .....	F-2
---	-----

### EASEMENTS

ASSIGNMENT OF EASEMENT .....	G-1
------------------------------	-----

EASEMENTS .....	G-2
-----------------	-----

LEAD-BASED PAINT DISCLOSURE OF INFORMATION FORM .....	H
---	---

1	SHORT FORM NOTICE OF CONVEYANCE AGREEMENT .....	I
2		
3	CERTIFIED REPRESENTATIONS	
4		
5	GOVERNMENT REPRESENTATIONS.....	J-1
6	CITY REPRESENTATIONS .....	J-2
7		
8	NATIONAL HISTORIC PRESERVATION ACT MOA.....	K
9		
10	ARMY RESERVE AGREEMENT .....	L

**AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE CITY OF TUSTIN, CALIFORNIA  
FOR THE CONVEYANCE OF A PORTION OF THE FORMER  
MARINE CORPS AIR STATION TUSTIN**

This Agreement for the Conveyance of Real Property (hereinafter referred to as the "Agreement") is entered into this 13 day of May 2002 (the "Effective Date"), between the **UNITED STATES OF AMERICA**, acting by and through the Department of the Navy (the "Government"), and the **CITY OF TUSTIN, CALIFORNIA** (the "City"), recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense with regard to the disposition and conveyance of portions of the former Marine Corps Air Station Tustin, California. The Government and the City are each sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS:**

A. The Defense Base Closure and Realignment Commission recommended the closure of Marine Corps Air Station Tustin ("MCAS Tustin") located within the Cities of Tustin and Irvine, California and consisting of approximately one-thousand six-hundred and two (1,602) acres of real property, together with the buildings, improvements and related and other personal property located thereon and all rights, easements and appurtenances thereto.

B. Pursuant to the authority provided by section 2905(b)4 of the Defense Base Closure and Realignment Act of 1990, as amended, and the implementing regulations of the Department of Defense (32 CFR Part 175), the Secretary of the Navy is authorized to convey surplus property at a closing installation to the local redevelopment authority at no cost for economic development purposes. By application dated March 5, 1999, as subsequently amended, the City applied for a "No-Cost" Economic Development Conveyance ("EDC") for portions of MCAS Tustin (the "EDC Application"), to be used and developed in accordance with the "Reuse Plan for MCAS Tustin" dated October 1996 and amended by Errata of September 1998 (the "Base Reuse Plan") that was reviewed and approved by the United States Department of Housing and Urban Development.

C. Following an extensive review of the EDC Application, the Government has approved the EDC Application in part. Those portions of MCAS Tustin to be conveyed to the City pursuant to this Agreement are described in Exhibit "A" of this Agreement, and are referred to herein as the "Property." Those portions of the MCAS Tustin not part of the approved EDC

# MCAS TUSTIN CONVEYANCE AGREEMENT

## Page 2

Application and intended for sale by the Government are also described in Exhibit "A" of this Agreement, and are referred to herein as the "Government Parcels."

D. Since some of the Property is not presently suitable for conveyance, such portions of the Property will be transferred to the City pursuant to a Lease in Furtherance of Conveyance ("LIFOC").

E. The Government prepared an Environmental Baseline Survey ("EBS") for the Property dated March 2001, a copy of which has been provided to the City.

F. In accordance with the provisions of the National Environmental Policy Act ("NEPA") of 1969, as amended, and the California Environmental Quality Act ("CEQA"), the Government and the City prepared a Joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") for the disposal and reuse of the Property. The City certified the EIS/EIR as complete on January 17, 2001. A Record of Decision ("NEPA ROD") regarding the disposal of the Property, which is attached hereto as Exhibit "D" and made a part hereof as if set out at length, was issued on March 2, 2001.

G. In accordance with the provisions of the National Historic Preservation Act, the Government has determined that the disposal of the Property, as hereinafter defined, will have an effect upon those portions of the Property that are listed or that are eligible for listing in the National Register of Historic Places. A Memorandum of Agreement among the Department of the Navy, the California State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation, which is attached hereto as Exhibit "K" and made a part hereof as if set out at length, sets forth in full the Parties' obligations under the National Historic Preservation Act and implementing regulations.

## AGREEMENTS

**NOW, THEREFORE,** in consideration of the foregoing and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Government and the City agree as follows:

### ARTICLE 1. Definitions

1.1 **Closing.** The transactions by which portions of the Property shall be conveyed to the City. The Parties contemplate that there will be multiple Closings, including an Initial Closing and Subsequent Closings.

1.1.1 **Initial Closing.** The date on which Parcel Group I and the Initial

## MCAS TUSTIN CONVEYANCE AGREEMENT

### Page 3

1 Personal Property will be conveyed to the City, and the remaining Parcels will be leased  
2 to the City through a LIFO, as set forth below.

3  
4 1.1.2 **Subsequent Closing.** Each Closing after the Initial Closing.

5  
6 1.2 **Easement.** An interest in real property as described in Article 6.

7  
8 1.3 **Environmental Reports.** The documents included in the CERCLA  
9 administrative record for MCAS Tustin and EBS, FOSTs, FOSLs, and any supporting documents  
10 specifically referred to therein, including the lead-based paint and asbestos surveys relating to the  
11 improvements on the Real Property.

12  
13 1.4 **FOST.** A Finding of Suitability to Transfer ("FOST") that represents a written  
14 determination by the Government that the Real Property or a Parcel may be transferred by  
15 Quitclaim Deed to the City in full compliance with Section 120(h)(3) or Section 120(h)(4) of  
16 CERCLA.

17  
18 1.5 **LIFO.** The Lease In Furtherance Of Conveyance entered into at the Initial  
19 Closing by the Government and the City and attached hereto and made a part hereof as Exhibit  
20 "E".

21  
22 1.6 **Parcel.** A portion of the Real Property described in Exhibit A.

23  
24 1.7 **Personal Property.** That certain tangible personal property, including without  
25 limitation, furnishings, furniture, machinery, equipment, tools, appliances, utility distribution  
26 systems, and vehicles to be transferred to the City under this Agreement.

27  
28 1.7.1 **Initial Personal Property.** That Personal Property to be transferred to  
29 the City at the Initial Closing, including those items left in place on the Real Property, pursuant  
30 to the terms and conditions set forth in a Bill of Sale in substantially the form attached hereto and  
31 made a part hereof as Exhibit "F-1".

32  
33 1.7.2 **Subsequent Personal Property.** That Personal Property to be  
34 transferred to the City at a time after the Initial Closing pursuant to the terms and  
35 conditions set forth in a Bill of Sale in substantially the form attached hereto and made a  
36 part hereof as Exhibit "F-2".

37  
38 1.8 **Property.** The property consists of Real Property, Easements and Personal  
39 Property.

40  
41 1.9 **Quitclaim Deed(s).** Those certain recordable quitclaim deeds conveying

## MCAS TUSTIN CONVEYANCE AGREEMENT

### Page 4

ownership of the Real Property to the City. The deeds for Parcel Group I to be conveyed at the Initial Closing are attached hereto and made a part hereof as Exhibits "C-A" through "C-H." The deeds to be delivered at the Subsequent Closings shall be in substantially the same form as the deeds for Parcel Group I, provided, however, that such deeds will be tailored to meet the requirements of the FOSTs for such Parcels.

**1.10 Real Property.** The real property consisting of approximately 1153 acres of land located within the bounds of the former MCAS Tustin, as shown in the EDC Application comprising: Parcels 1, 4-8, 10-12, 14, 16, 17, 19, 25-34, 40, and 42; a 1.25 acre portion of Parcel 24 for use as a fire station located generally adjacent to Edinger and the future West Connector; more particularly described in Exhibit "A" attached hereto and made part hereof. The Real Property shall include, but shall not be limited to, any right, title or interest the Government may have in the following:

1.10.1 All buildings, facilities, roadways, and other infrastructure, including the entire MCAS Tustin storm drainage systems, sewer systems, and the electrical, natural gas, telephone, and water utility distribution systems located thereon, and any other improvements on the Real Property (including all replacements or additions thereto between the date of this Agreement and the date of conveyance of the Real Property to the City),

1.10.2 All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto,

1.10.3 All rights to minerals, gas, oil, and water.

1.10.4 If the County of Orange withdraws its Public Benefit Conveyance Application for MCAS Tustin Reuse Plan Disposal Site 2, then and in that event, the Parties agree to amend this Agreement to include such Disposal Site 2 within the scope of this Agreement.

**1.11 Title Insurer.** Such title insurance company as the City shall from time to time designate.

## **ARTICLE 2. No Cost EDC.**

Pursuant to Section 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, as amended, the Government agrees to transfer and convey the Property to the City pursuant to a "No Cost EDC" and the City agrees to acquire, the Property, as described in Exhibits "A", "F" and "G" in consideration of the covenants, conditions and restrictions



# MCAS TUSTIN CONVEYANCE AGREEMENT

## Page 5

contained herein and other good and valuable consideration, subject to the terms, conditions and general provisions set forth in this Agreement.

### ARTICLE 3. Transfer and Conveyance.

3.1 **Sequence of Conveyances.** The Government agrees to convey the Real Property to the City in multiple parcels, by separate conveyances and Closings, subject to the due execution of a FOST, covering each Parcel or subsection of a Parcel. The schedule for the conveyance of each Parcel is dependent upon the Government's ability to remediate the environmental contamination on such Parcel in a manner described in paragraph 3.4 below. The initial Parcels to be conveyed to the City will be Parcel Group I on or before the first day of May 2002. The Government shall use its best efforts to convey the Property to the City, in accordance with the following schedule (the "Conveyance Schedule"):

3.1.1 Parcel Group I, consisting of approximately 977 acres as set forth in Exhibit "B," on May 1, 2002;

3.1.2 Parcel Group II, consisting of approximately 39 acres as set forth in Exhibit "B" in December 2002 (These parcels will be leased in conjunction with the conveyance of Parcel Group I);

3.1.3 Parcel Group III, consisting of approximately 18 acres as set forth in Exhibit "B" in September 2006 (These parcels will be leased in conjunction with the conveyance of Parcel Group I), and;

3.1.4 Parcel Group IV, consisting of approximately 119 acres as set forth in Exhibit "B" in April 2008 (These parcels will be leased in conjunction with the conveyance of Parcel Group I).

The Parties recognize that although the Government will utilize its best efforts to achieve conveyances by the dates set forth above, those dates are based on the present best estimate of work required to complete the Government's remedial actions, the full extent and nature of which are not presently known. The Parties also recognize that the anticipated dates for conveyance may be impacted by regulator and public review and other events not within the control of the Parties.

Following the Initial Closing, the City shall not refuse to accept the conveyance of any Parcel tendered by the Government following the execution of the FOST for such Parcel. Failure to accept such conveyance within 30 days following the tender of the Quitclaim Deed for such Parcel shall be a breach of this Agreement pursuant to Article 31.

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 6

1           3.2     **Legal Descriptions.** Legal descriptions of the Real Property and Easements have  
2 been provided by the City to the Government. In the event that an error is made in a legal  
3 description, the Parties and their successors and assigns will cooperate, at no expense to the  
4 Government, in executing and delivering instruments required to correct the error.

5  
6           3.3     **Quitclaim Deeds.** The Real Property shall be conveyed by good and sufficient  
7 Quitclaim Deeds in substantially the form of the Quitclaim Deeds attached hereto and made a  
8 part hereof as Exhibits "C-1" through "C-8" for the conveyance of Parcel Group I.

9  
10          3.4     **Environmental Condition.** Remediation of the Real Property shall be  
11 conducted in a manner that is consistent, to the maximum extent practicable, with the Base Reuse  
12 Plan.

13  
14          3.5     **Subparcels.** The City shall have the unilateral right, at its sole cost and  
15 expense, to specify that one or more of the Parcels included in a Parcel Group other than Parcel  
16 Group I shall be conveyed in a reasonable number of Subparcels provided that the City complies  
17 with the following conditions: (1) The City prepares plats and legal descriptions of the  
18 Subparcels for review and approval by the Government, (2) the City will accept simultaneous  
19 conveyance from the Government of all Subparcels within the Parcel for which subparcelization  
20 is requested, (3) that such subparcelization shall not otherwise delay the conveyance of all or any  
21 portion of the Parcel(s); and (4) that such subparcelization shall not increase the Government's  
22 remediation costs. Either Party may request that remediated portions of any Parcel be conveyed  
23 prior to the unremediated remainder of such Parcel; however, any such conveyance shall require  
24 the mutual consent of the Parties and any costs associated therewith shall be borne by the  
25 requesting Party.

26  
27          3.6     **Preparation of Quitclaim Deeds.** The Parties acknowledge that it is in their  
28 mutual best interest to coordinate and cooperate in the preparation of the Quitclaim Deeds.  
29 Accordingly, the Parties shall, to the maximum extent practicable, exchange information,  
30 coordinate the drafting of the Quitclaim Deeds, and conclude the review of documents as rapidly  
31 as possible.

32  
33          3.7     **Surveys and Title Insurance.** Any title insurance that may be desired by the  
34 City shall be procured at its sole cost and expense. The Government shall cooperate with the  
35 City or its authorized agent and shall permit examination and inspection of any documents  
36 relating to the title of the Property as it may have available. If such searches disclose title  
37 exceptions that appear to be in error or of concern to the City, Government agrees to  
38 cooperatively work with the City to have the title exceptions removed, released, or insured over.

39  
40          3.8     **LIFOC.** The Government shall lease to the City all Parcels not conveyed to the  
41 City at the Initial Closing through the LIFOC.

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 7

3.9 **Personal Property.** The Government's right, title and interest in the Initial Personal Property shall be transferred to the City at the Initial Closing pursuant to the terms and conditions of a Bill of Sale, in substantially the form attached hereto and made part hereof as Exhibit "F-1"; the Government's right, title and interest in the Subsequent Personal Property shall be transferred to the City at a time subsequent to the Initial Closing when the Government no longer requires such Subsequent Personal Property for Government activities at MCAS Tustin or MCAS El Toro pursuant to the terms and conditions of a Bill of Sale, in substantially the form attached hereto and made part hereof as Exhibit "F-2."

### **ARTICLE 4. City Subsequent Conveyance and Use of Property.**

4.1 Following conveyance of Property from the Government to the City, the City shall:

4.1.1 **Santa Ana Unified School District.** Convey approximately twenty-two (22) acres of Parcel 1 to the Santa Ana Unified School District ("SAUSD") (or otherwise dispose of such 22 acres, as agreed to by the City and SAUSD), provided that SAUSD agrees to settle its disputes with the City; if the SAUSD does not execute a settlement agreement with the City by February 27, 2003, convey such 22 acres to the Rancho Santiago Community College District ("RSCCD").

4.1.2 **Rancho Santiago Community College District.** Convey approximately fifteen (15) acres of Parcel 1 to the Rancho Santiago Community College District ("RSCCD").

#### **4.1.3 South Orange County Community College District.**

4.1.3.1 Convey the balance of Parcel 1 (less the twenty-two (22) acre portion set aside for SAUSD) to the South Orange County Community College District ("SOCCCD"), provided that SOCCCD unconditionally consents to the expansion of RSCCD's boundary to include the property in Parcel 1 to be transferred to RSCCD; if SOCCCD does not so consent by May 1, 2002, convey the entire Parcel 1, exclusive of the 22 acre portion set aside for SAUSD, to RSCCD.

4.1.3.2 Convey the northern portion of Parcel 19 to SOCCCD, provided that SOCCCD unconditionally consents to the expansion of RSCCD's boundary to include the property in Parcel 1 to be transferred to RSCCD.

4.1.3.3 Convey Parcel 2 to SOCCCD, provided that SOCCCD unconditionally consents to the expansion of RSCCD's boundary to include the property in Parcel 1 to be transferred to RSCCD and, provided further, that the County of Orange

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 8

1 Sheriff's Department withdraws its PBC Application and Parcel 2 is included as part of  
2 the Real Property as defined herein.  
3

### 4 **ARTICLE 5. Disposal of Government Parcels.**

5  
6 5.1 The Government intends to dispose of the Government Parcels to persons and  
7 entities other than the City. The Government shall ensure that any sale solicitation documents  
8 concerning the Government Parcels clearly state that the entities acquiring such Government  
9 Parcels, must work with the City of Tustin or the City of Irvine, as appropriate, as the local  
10 governmental bodies with zoning and other approval authority over the ultimate use of such  
11 parcels, on issues such as the fair share allocation of the cost of required infrastructure  
12 improvements that could be attributable to the development of such Government Parcels and the  
13 need to comply with the requirements of the MCAS Tustin Homeless Assistance Plan  
14 incorporated in the Base Reuse Plan and the Homeless Assistance Agreement, as amended  
15 ("Homeless Agreements"). The Homeless Agreements identify fourteen (14) units within the  
16 City of Irvine and thirty-six (36) units within the City of Tustin. Towards such implementation,  
17 the Parties agree that the City shall not adopt a regulatory exaction requirement for homeless  
18 purposes of more than twelve (12) units as described herein on the Government Parcels within  
19 the City of Tustin. In the event that the City adopts a regulatory exaction or imposes a greater  
20 requirement for homeless purposes on the Government Parcels within the City of Tustin, the  
21 Government may consider such imposition to be a breach of this Agreement and the Government  
22 may exercise any available remedies as set forth in Article 30.1 of this Agreement. However, it  
23 shall not be considered a breach of this Agreement, if, after the purchase of a Government Parcel  
24 or Parcels is completed, the City proposes, and thereafter the City and any such purchaser(s)  
25 mutually agree to, a different allocation of units for homeless purposes.  
26

27 5.2 The City has prepared a Specific Plan that delineates planning areas for MCAS  
28 Tustin and describes the permitted and conditionally permitted land uses, site development  
29 standards, and special development or reuse requirements within those planning areas. The  
30 Government Parcels are located in several of the planning areas. To facilitate the sale of the  
31 Government Parcels, unless enjoined by a court of competent jurisdiction, the City shall  
32 promptly initiate, strongly support and affirmatively pursue all steps required to consider  
33 adoption of the Specific Plan ( the "entitlement"), as it affects the Government Parcels within the  
34 City of Tustin in substantially the same form as is contained in the Base Reuse Plan, and  
35 consistent with the City's General Plan. The City shall take all implementing actions required of  
36 it to permit redevelopment of the Government Parcels including, but not limited to the active  
37 support and advocacy of any relevant state legislation. In entering into this Agreement, the  
38 Parties contemplate that the entitlement for the development of both the Real Property and  
39 Government Parcels will be made available by the City no later than the same time that such  
40 entitlement is available for the first increment of Real Property to be sold or developed (with the  
41 exception of infrastructure construction and development) by the City unless the City is enjoined

## MCAS TUSTIN CONVEYANCE AGREEMENT

### Page 9

1 by a court of a competent jurisdiction from rezoning the Real Property and Government Parcels.  
2 In the event that such entitlement is not available for the Government Parcels, the City shall not  
3 sell or develop (with the exception of infrastructure construction and development) any  
4 increment of Real Property until such time as the entitlement is available for the Government  
5 Parcels. If the City proceeds with such sale or development (with the exception of infrastructure  
6 construction and development) in violation of this Agreement, the Navy may terminate the  
7 Agreement as provided in Article 30.

8  
9 5.3 City agrees to take such reasonable actions as may be required to facilitate the  
10 sale of the Government Parcels. The City also agrees that purchasers of the Government Parcels  
11 will be treated in the same manner as any other purchaser of property within MCAS Tustin with  
12 regards to such matters as may affect sales and development, including the imposition of  
13 exactions.

#### 14 15 **ARTICLE 6. Easements.**

16  
17 6.1 **Assignment of Existing Easements.** To the extent such easements exist and  
18 are assignable, the Government shall assign to the City any easements held by the Government  
19 over, under, or through non-Government property necessary for the operation, maintenance, or  
20 improvement of any Parcel or utility infrastructure systems conveyed to the City, substantially in  
21 the form set forth in Exhibit "G-1", attached hereto ("Assignment of Easement"). To the extent  
22 such easements are not assignable by the Government, the Government will cooperate with the  
23 City to acquire from such property owners the necessary access rights.

24  
25 6.2 **Easements over Remaining Government Property.** The Government shall  
26 grant to the City general access easements and such other specific easements: 1) on, across, or  
27 over all portions of MCAS Tustin that are part of the Real Property, but not yet conveyed to the  
28 City, or that are to be conveyed to others, that are required by the City for operation and  
29 maintenance, improvement, or for the construction, operation and maintenance of any new or  
30 existing utility systems and roadways, and 2) on, across, or over all roads located on the MCAS  
31 Tustin remaining under the Government's ownership, provided such easements do not unduly  
32 conflict with the Government's activities or responsibility to protect human health and the  
33 environment or to conduct investigation or remediation activities substantially in the form set  
34 forth in Exhibit "G-2", attached hereto ("Easement").

35  
36 6.3 **Reserved Easements Over Conveyed Parcels.** The Quitclaim Deeds shall  
37 contain any necessary reservations of easements by the Government that are reasonably required  
38 for the benefit of real property remaining under the Government's ownership, including but not  
39 limited to non-exclusive easements for ingress and egress, operation and maintenance and  
40 construction of any new or existing utility systems on, over, or across certain existing roads  
41 located on such conveyed Parcels, as applicable.

# MCAS TUSTIN CONVEYANCE AGREEMENT

Page 10

## ARTICLE 7. Closing and Settlement.

7.1 **Opening of Escrow.** If an escrow is required by either Party for any Closing other than the Initial Closing, the Parties agree to jointly develop escrow instructions consistent with this Agreement for the Closing, as necessary. The Parties shall deposit the agreed upon escrow instructions with a Title Company and the instructions shall serve as instructions to the Title Company, as the escrow holder, for each of the Closings contemplated hereby. The Government and the City agree to execute such additional escrow instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement, provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control. If no escrow is established, the deliveries shall be made by each Party to the other at a mutually agreed upon time and location, consistent with the other provisions of this Agreement. The Government shall not be responsible for any costs associated with an escrow.

7.2 **Schedule.** The Parties shall use their best effort to consummate the Initial Closing on or before the first day of May 2002 and Subsequent Closings in accordance with the Conveyance Schedule set forth in Article 3, or such other mutually agreeable date.

7.3 **Pre-Closing Government Deliveries.** The Government shall make available to the City at the execution of this Agreement and within 72 hours prior to each Closing documents defined in Articles 9 and 10.

7.4 **Government Initial Closing Deliveries.** The Government shall deliver to the Initial Closing the following documents reasonably satisfactory to the City and in a form previously reviewed and approved by the City, duly authorized, executed, and notarized:

7.4.1. Quitclaim Deed(s) in the form set forth in Exhibits "C-1" through "C-8", for the Parcels that comprise Parcel Group I to be conveyed at the Initial Closing pursuant to this Agreement.

7.4.2. Easements in the form set forth in Exhibit "G-2"

7.4.3 Assignment of Easements in the form set forth in Exhibit "G-1."

7.4.4 FOSTs for the Parcels that comprise Parcel Group I to be conveyed at the Initial Closing.

7.4.5 Bill of Sale for the Initial Personal Property that will be conveyed to the City in the form set forth in Exhibit "F-1."



## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 11

1  
2                   7.4.6       The LIFOC in the form set forth in Exhibit "E."

3  
4                   7.4.7       The Government's Finding of Suitability to Lease ("FOSL").

5  
6                   7.4.8       Certificate confirming that the Government representations in this  
7 Agreement are true and correct as of the date of the Closing in substantially the form set  
8 forth in Exhibit J-1.

9  
10                  7.4.9       A fully executed Disclosure of Information on Lead-Based Paint  
11 and/or Lead-Based Paint Hazards in the form set forth in Exhibit "H."

12  
13                  7.5        **City Initial Closing Deliveries.** The City shall deliver to the Initial Closing  
14 the following Closing Documents reasonably satisfactory to the Government and in a form  
15 previously reviewed and approved by the Government, duly authorized, executed and notarized:

16  
17                  7.5.1.     A City resolution authorizing the City to consummate the transaction.

18  
19                  7.5.2.     Accepted Quitclaim Deed(s) in the form set forth in Exhibits "C-1"  
20 through "C-8", for the Parcels that comprise Parcel Group I to be conveyed at the Initial  
21 Closing pursuant to this Agreement.

22  
23                  7.5.3.     Accepted Easements in the form set forth in Exhibit "G-2."

24  
25                  7.5.4.     Accepted Assignment of Easements in the form set forth in Exhibit  
26 "G-1."

27  
28                  7.5.5.     The LIFOC in the form set forth in Exhibit "E."

29  
30                  7.5.6     A fully executed Disclosure of Information on Lead-Based Paint  
31 and/or Lead-Based Paint Hazards in the form set forth in Exhibit "H."

32  
33                  7.5.7.     Such additional documents as may be required by California law, the  
34 Title Insurer, or the Government.

35  
36                  7.5.8.     Certificate confirming that the representations of the City in this  
37 Agreement are true and correct as of the date of the Closing in substantially the form set  
38 forth in Exhibit J-2.

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 12

1           **7.6 Government Subsequent Closing Deliveries.** The Government shall deliver  
2 to each Subsequent Closing the following documents reasonably satisfactory to the City and in a  
3 form previously reviewed and approved by the City, duly authorized, executed and notarized:

4  
5           7.6.1. Quitclaim Deed(s) in substantially the form set forth in Exhibits "C-1"  
6 through "C-8", conveying the Parcel(s) to be conveyed at that Closing pursuant to this  
7 Agreement.

8  
9           7.6.2. FOST(s) for such Parcel(s) to be conveyed at that Closing.

10  
11           7.6.3. Certificate confirming that the Government representations in this  
12 Agreement are true and correct as of the date of the Closing in substantially the form set  
13 forth in Exhibit J-1.

14  
15           7.6.4 A fully executed Disclosure of Information on Lead-Based Paint  
16 and/or Lead-Based Paint Hazards substantially the form set forth in Exhibit H.

17  
18           **7.7 City Subsequent Closing Deliveries.** The City shall deliver to each  
19 Subsequent Closing the following Closing Documents reasonably satisfactory to the Government  
20 and in a form previously reviewed and approved by the Government, duly authorized, executed  
21 and notarized:

22  
23           7.7.1 Accepted Quitclaim Deed(s) in the form set forth in Exhibits "C-1"  
24 through "C-8", for the Parcels to be conveyed at that Closing pursuant to this Agreement.

25  
26           7.7.2 A fully executed Disclosure of Information on Lead-Based Paint  
27 and/or Lead-Based Paint Hazards in the form set forth in Exhibit "H."

28  
29           7.7.3 Such additional documents as may be required by California law, the  
30 Title Insurer, or the Government.

31  
32           7.7.4 Certificate confirming that the representations of the City in this  
33 Agreement are true and correct as of the date of the Closing in substantially the form set  
34 forth in Exhibit J-2

35  
36           **7.8 Subsequent Personal Property.** The Government shall execute and deliver to  
37 the City the Bill of Sale for the Subsequent Personal Property at a mutually convenient time and  
38 place following a determination by the Government that it no longer requires the use of the  
39 Subsequent Personal Property substantially the form set forth in Exhibit F-2.

40  
41           **ARTICLE 8. Time of the Essence.**



## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 13

1  
2 In order to facilitate the economic redevelopment of MCAS Tustin and the Government's  
3 disposal of the Property, time is of the essence in this Agreement.  
4

### 5 **ARTICLE 9. Environmental Reports.**

6  
7 9.1 The Government has made all known relevant Environmental Reports of  
8 material significance available for inspection and copying by the City prior to the execution of  
9 this Agreement and shall continue to make them readily available as environmental  
10 investigations continue. The City and its transferees, agents, successors and assigns, at their own  
11 expense, shall have the right to inspect, review, and copy the Environmental Reports with  
12 seventy-two (72) hour prior notice.  
13

14 9.2 The CERCLA administrative record component of the Environmental Reports  
15 shall be indexed and an up-to-date copy of the index shall be provided to the City prior to the  
16 Initial Closing and again prior to each Subsequent Closing for subsequent Parcels.  
17

18 9.3 At all times the Government shall keep the City fully informed of the  
19 Government's progress in completing the remediation of each Parcel.  
20

### 21 **ARTICLE 10. Delivery of Property Documents**

22  
23 On or about the date of the Initial Closure, the Government will make available with  
24 seventy-two (72) hour prior notice for transfer to and removal or copying by the City those  
25 surveys, soils and geological reports, studies, assessments, test results, well close-out reports,  
26 leases, licenses, easements, permits, contracts and other documents relating to the physical or  
27 structural composition of the Property including plans and specifications for buildings and other  
28 improvements, drawings of underground utility systems (including gas, sewer, water, electrical,  
29 and telephone), personal property (including executed and completed motor vehicle transfer of  
30 ownership forms) and any and all other documents of material significance to the ownership, use,  
31 management or operation of the Property ("Property Documents") which may be physically  
32 located at Building 368, MCAS El Toro, at Southwest Division of the Naval Facilities  
33 Engineering Command, or at such other place as the Government identifies as the repository of  
34 Property Documents. The Government shall make available to the City any other documents  
35 available to the Government that the City may reasonably request relating to the Property. The  
36 Government shall cooperate with the City in providing information about title, physical condition  
37 and other matters relating to the ownership, maintenance, operation and use of the Property.  
38

### 39 **ARTICLE 11. Use of Proceeds From Sale or Lease.**

40  
41 11.1 **Economic Development Purposes.** Any proceeds from a sale, lease, or

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 14

equivalent use of the Property (i.e., any mechanism that serves to accomplish the same purposes of a sale or lease such as licenses, permits, concession agreements, etc.) received by the City for the Property during the first seven (7) years after the recordation of the first Quitclaim Deed or LIFO for a part of the Real Property, must be used to support long-term job creation and the economic redevelopment of, or related to, MCAS Tustin. Tax revenues shall not be construed to be proceeds from a sale, lease, or equivalent use of the Property.

**11.2 Examples of Allowable Uses Proceeds.** Allowable uses of proceeds pursuant to subparagraph 11.1 include payment for, or offsetting the costs of public investment, for the following purposes:

- Road construction
- Transportation management facilities
- Storm and sanitary sewer construction
- Police and fire protection facilities and other public facilities
- Utility construction
- Building rehabilitation
- Historic property preservation
- Pollution prevention equipment or facilities
- Demolition
- Disposal of hazardous materials generated by demolition
- Landscaping, grading, and other site or public improvements
- Planning for or the marketing of the redevelopment and reuse of MCAS Tustin

Other activities on MCAS Tustin that are related to those listed above (for example, new construction related to job creation and economic redevelopment, capital improvements, and operation and maintenance of MCAS Tustin needed to market its redevelopment and reuse) shall also be considered an appropriate, allowable use of such proceeds. In order for investments made off of MCAS Tustin to be considered allowable use of such proceeds, the City shall submit appropriate documentation to the Government for its approval which demonstrates that such investments are related to those listed above and directly benefit the City's economic redevelopment and long-term job generation efforts on MCAS Tustin. The Government shall notify the City of its receipt of the City's request within thirty (30) calendar days of receipt of the City's request and shall use its best efforts to notify the City of its decision within sixty (60) calendar days of the date of the Government's initial notification of receipt.

The Government acknowledges that the following projects directly benefit the City's economic redevelopment and long-term job generation efforts on MCAS Tustin not subject to prior Government approval: the Tustin Ranch Road Interchange/Walnut extension project, the Peters Canyon Channel improvements project, the Santa Ana/Santa Fe Channel improvements, off-site transportation/circulation mitigation measures required by the EIS/EIR for the Disposal

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 15

1 and Reuse of MCAS Tustin and other mitigation costs as identified in the EDC Application, as  
2 amended.

3  
4 Proceeds provided to the Santa Ana Unified School District ("SAUSD"), restricted for  
5 use to construct or acquire school facilities either on or off MCAS Tustin, or used by the City to  
6 install utility connections off-site to any site conveyed by the City to SAUSD, or to reimburse  
7 SAUSD for any fair share obligation it may have for backbone infrastructure to serve MCAS  
8 Tustin, or to finance any obligations to SAUSD, shall also be an allowable use of proceeds that  
9 will not be subject to recoupment, including any obligation that the City may incur to make  
10 payments out of land sale proceeds to SAUSD after the seven (7) year recoupment period  
11 identified in subparagraph 11.1. City to modify based on agreement language to date  
12

13 **11.3 Records.** Consistent with standard accounting practices for tax purposes, the  
14 City shall maintain adequate records and books of account for income and expenses related to the  
15 redevelopment of MCAS Tustin detailing transactions described in subparagraphs 11.1 and 11.2.  
16 The City shall provide the Government with access to such records and books of account and  
17 proper facilities for inspection thereof at all reasonable times.  
18

19 **11.4 Financial Statements.** The City shall submit to the Government an annual  
20 financial statement certified by an independent certified public accountant. The statement shall  
21 cover the City's use of proceeds it receives from the sale, lease, or equivalent use of the Property.  
22 The first such statement shall be delivered on December 1, 2003, and shall cover the period from  
23 the date of recordation of the first Quitclaim Deed or LIFO until June 30, 2003. The next seven  
24 annual statements shall be submitted on December 1 of each succeeding year and shall cover the  
25 time period from July 1 of the previous year to June 30 of the year of submittal. The last such  
26 annual statement shall be delivered on December 1, 2009. The annual financial statements shall  
27 cover the use of all proceeds from all Property that has been conveyed by the Government to the  
28 City pursuant to this Agreement from the date of recordation of the first Quitclaim Deed to the  
29 end of the relevant annual reporting period.  
30

31 **11.5 Recoupment of Proceeds.** The Government may recoup all proceeds  
32 described in subparagraph 11.1, which have not been reinvested in allowable uses described in  
33 subparagraphs 11.1 or 11.2. If recoupment is desired after review of annual financial statements,  
34 the Government shall notify the City in writing that it intends to recoup proceeds in a specific  
35 amount, describing why it believes that those proceeds have not been reinvested as required by  
36 subparagraph 11.1 or 11.2. Within 30 days of receipt of such notification, the City shall submit  
37 its response to the Government. Within 30 days of receipt of the City's response, or within 30  
38 days of the date the City's response was due under this subparagraph, the Government shall issue  
39 its decision on the matter, which shall be final and binding on the City subject to the Dispute  
40 Resolution Procedures contained in Article 25. The City shall remit the amount of recoupment  
41 due within 60 days of the final resolution of the dispute.

**ARTICLE 12. Government's Representation.**

12.1 The Government hereby represents to the City on and as of the Effective Date and will represent as of the date of each closing as follows:

12.1.1 Execution of Agreement. That the Government has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the Government pursuant hereto, and all required action and approvals therefor have been duly taken and obtained for the Initial Closing. The Government further represents to the City that as of the date(s) of Subsequent Closing(s), the Government shall have full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the Government pursuant hereto for the Subsequent Closing(s) unless subsequently prohibited by law. This Agreement and all documents to be executed pursuant hereto by the Government are and shall be binding upon and enforceable against the Government in accordance with their respective terms.

12.1.2 Complete Information. All known relevant Environmental Reports and Property Documents of material significance have been made available to the City for inspection and copying.

12.1.3 Contracts, Leases, or Licenses. To the best of Government's knowledge, information and belief, the Government is not aware of any contracts, leases, or licenses with respect to the Real Property that will survive closing. To the best of Government's knowledge, no default has occurred and no event has occurred, with notice or lapse of time or both, which would constitute a default under any agreement, contracts, leases or other obligations of the Government related to the operations of the property and all such agreements, contracts, leases and other obligations, if any, with regard to the Property to be conveyed. The Government has not assigned a security interest in any of the agreements,

12.1.4 Personal Property. To the best of Government's knowledge, information and belief, the Government is not aware of any security interests or other encumbrances on the title of any of the Personal Property listed in the Bill(s) of Sale.

**ARTICLE 13. City Representations.**

The City hereby represents to the Government that on and as of the Effective Date and on and as of the Initial Closing, the City has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the City pursuant

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 17

hereto, and all required action and approvals therefor have been duly taken and obtained for the Initial Closing. The City further represents to the Government that as of the Subsequent Closing(s), the City shall have full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the City pursuant hereto, and all required action and approvals will have been duly taken and obtained for the Subsequent Closing(s). The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the City shall be duly authorized to sign the same on the City's behalf and to bind the City thereto. This Agreement and all documents to be executed pursuant hereto by the City are and shall be binding upon and enforceable against the City in accordance with their respective.

### ARTICLE 14. Environmental Provisions.

The Government recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Public Law 102-484) as amended, regarding indemnification of transferees of closing Department of Defense property.

### ARTICLE 15. Covenant Against Contingent Fees.

The City warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the City for the purpose of securing the successful purchase of the Property by the City. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally. For breach or violation of the warranty, Government has the right to annul this Agreement without liability or in its discretion to require the City to pay, in addition to the consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

### ARTICLE 16. Notices.

Notices shall be deemed sufficient under this Agreement if made in writing and submitted to the following addresses (or to any new or substitute address hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure set forth herein by the intended recipient of such notice):

If to the City:	City of Tustin
	300 Centennial Way
	Tustin, California 92780
	Attn: City Manager

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 18

Christine Shingleton  
Assistant City Manager  
City of Tustin  
300 Centennial Way  
Tustin, California 92780

With a copy to: George R. Schlossberg, Esq.  
Kutak Rock LLP  
1101 Connecticut Avenue, N.W.  
Suite 1000  
Washington, DC 20036  
(202) 828-2418

If to Government: Commanding Officer  
Southwest Division  
Engineering Field Division  
Naval Facilities Engineering Command  
1220 Pacific Highway  
San Diego, CA 92132-5189

With a copy to: Navy BRAC Operations  
Southwest Division  
Naval Facilities Engineering Command  
1220 Pacific Highway  
San Diego, CA 92132-5189

### ARTICLE 17. Prior Liabilities.

17.1 To the extent provided by law, the Government shall remain responsible for all liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, "Pre-Closing Obligations") against the Government attributable to the period prior to the conveyance or lease of the Property to the City. The City shall notify the Government of the existence or occurrence of any such Pre-Closing Obligations of which it has knowledge and shall cooperate with the Government in the disposition thereof.

17.2 To the extent provided by law, the Government agrees that it shall be solely responsible for activities of its employees, agents or contractors conducted on the Property by the Government, its agents, employees or contractors under this Agreement.

### ARTICLE 18. Finality of Conveyance.



## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 19

1           **18.1 Effect of Quitclaim Deeds.** The delivery of the executed Quitclaim Deeds  
2 pursuant to this Agreement from the Government to the City shall be deemed full performance  
3 by the Government of its obligations hereunder with regard to those Parcels conveyed by each  
4 Quitclaim Deed other than any obligations of the Government which are required by this  
5 Agreement or by law (including without limitation any obligations under CERCLA Section  
6 120(h) and Section 330 of the Department of Defense Authorization Act of 1993, as amended) to  
7 be performed after the delivery of each such Quitclaim Deed.

8  
9           **18.2 Possession.** Upon any Closing, the Government shall immediately deliver to the  
10 City possession of the Property conveyed in such Closing in the condition required by this  
11 Agreement.

12  
13           **18.3 No Right of Rescission.** There shall be no right of rescission in the  
14 Government as to the Property, or any portion thereof, once conveyed to the City.

### 15 16           **ARTICLE 19. As Is Where Is.**

17  
18           Except as provided herein, all of the Property conveyed or leased hereunder will be “as  
19 is” and without any representation or warranty whatsoever and without any obligation on the part  
20 of the United States of America except as expressly provided for by law, this Agreement, the  
21 Quitclaim Deeds or the LIFO.

### 22 23           **ARTICLE 20. Government’s Covenants.**

24  
25           **20.1** From the Effective Date, the Government shall not do, permit, or agree to do,  
26 any of the following:

27  
28           **20.1.1** Sell, encumber or grant any interest in the Property or any part thereof  
29 in any form or manner whatsoever or otherwise perform or permit any act which will  
30 diminish or otherwise affect the City’s interest under this Agreement or in or to the  
31 Property or which will prevent the Government’s full performance of its obligations  
32 hereunder, without the prior written consent of the City; or

33  
34           **20.1.2** Remove any fixtures or the Personal Property, without the prior written  
35 consent of the City, except when such removals or alterations are in association with the  
36 Government’s continuing obligations under CERCLA or Government’s caretaker  
37 operations at either MCAS Tustin or MCAS El Toro.

38  
39           **20.1.3** The provisions of 20.1.1 shall not apply to notices, restrictions or  
40 covenants to restrict the use of Property incorporated into Quitclaim Deeds, or entered  
41 into by the Government and the California Department of Toxic Substances Control

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 20

1 pursuant to § 1471 of the California Civil Code and Chapters 6.5 and 6.8 of the California  
2 Health & Safety Code that are executed for a given parcel contemporaneously with the  
3 execution of Quitclaim Deeds for such Parcel at the Initial Closing or Subsequent  
4 Closings, and in accordance with a CERCLA ROD or FOST for the Parcel.

### 5 6 **ARTICLE 21. Liability for Environmental Contamination.**

7  
8 Notwithstanding any other provision of this Agreement, and except as set forth in the  
9 Quitclaim Deeds described herein or as provided under leases entered into between the City and  
10 the Government prior to the date of execution of this Agreement and the LIFOC, the City does  
11 not hereby assume any liability or responsibility for environmental impacts and damage located  
12 on the Real Property prior to the date of conveyance to the City or caused by the Government's  
13 use of hazardous materials on any portion of the Property prior to the date of conveyance. The  
14 City has no obligation under this Agreement to undertake the defense of any claim or action,  
15 whether in existence now or brought in the future, or to conduct any cleanup or remediation  
16 action solely arising out of the use or release of any hazardous materials, on or from any part of  
17 the Property: 1) due solely to activity on the Property by the Government or 2) during the  
18 Government's ownership of the Property except as provided under leases entered into between  
19 the City and the Government prior to the date of execution of this Agreement and the LIFOC.

### 20 21 **ARTICLE 22. Short Form Notice.**

22  
23 Upon execution of this Agreement, the City and Government shall execute the Short  
24 Form Notice of Agreement attached hereto as Exhibit "I". The Short Form Notice of Agreement  
25 shall be recorded in the Official Records of the County of Orange, California immediately  
26 following the execution of this Agreement.

### 27 28 **ARTICLE 23. Modification; Waivers.**

29  
30 This Agreement contains the entire agreement and understanding of the parties in respect  
31 to the purchase and sale of the Property, and may not be amended, modified or discharged nor  
32 may any of its terms be waived except by an instrument in writing signed by the Parties. A  
33 waiver by a Party of a specific provision shall not be deemed a waiver of any subsequent  
34 provision. The Parties hereto shall not be bound by any terms, conditions, statements, warranties  
35 or representations, oral or written, not contained herein.

### 36 37 **ARTICLE 24. Further Assurances.**

38  
39 24.1 The Parties acknowledge that it is their mutual intent to effectuate an orderly,  
40 amicable, and expeditious transfer of the Property from Government to the City and that, toward  
41 that end, (i) any or all ambiguities herein shall, to the extent practicable, be construed in the way



## MCAS TUSTIN CONVEYANCE AGREEMENT

### Page 21

1 most liberally conducive to the aforesaid conveyance, (ii) neither Party shall be considered the  
2 drafter of this Agreement or any of its provisions for the purposes of any statute, case law, or rule  
3 of interpretation or construction, that would or might cause any provision to be construed against  
4 the drafter of the Agreement, (iii) the Parties agree to take such additional acts and/or to permit  
5 such additional actions (including but not limited to any actions required in the event it shall  
6 become necessary, before or after the conveyances contemplated herein, to effect a formal  
7 subdivision or subdivisions of the Property) and (iv) the Parties agree to execute, deliver and  
8 perform under the terms of such other documents as their respective legal counsel may deem  
9 necessary or appropriate to effect the purposes of this Agreement.

10  
11 24.2 The Parties acknowledge that the City executed a Memorandum of Agreement  
12 dated September 21, 2000 with the United States for the continued operation of a United States  
13 Army Reserve Facility at the former MCAS Tustin attached hereto as Exhibit "L" ("Army  
14 Reserve Agreement"). The Parties shall cooperate to implement the Army Reserve Agreement.

#### 15 16 **ARTICLE 25. Dispute Resolution Procedures.**

17  
18 25.1 If a dispute arises under this Agreement, the following procedures shall apply:  
19 (1) Either Party may invoke this dispute resolution procedure, (2) The Parties shall make  
20 reasonable efforts to informally resolve disputes at the lowest level prior to the issuance of a  
21 formal written statement of dispute under the procedures set forth below, and (3) Both Parties  
22 shall abide by the terms and conditions of any final resolution of the dispute.

23  
24 25.2 Within thirty (30) days after any action which leads to or generates a dispute or  
25 after efforts to informally resolve a dispute have failed, either Party may submit a written  
26 statement of dispute to the other Party setting forth the nature of the dispute, the work affected by  
27 the dispute, the disputing Party's technical and legal position regarding the dispute, and the relief  
28 requested. The Commanding Officer, Southwest Division, Naval Facilities Engineering  
29 Command and the City Manager of the City, shall serve as Dispute Resolution Managers for their  
30 respective Party. The written statement of dispute shall be mailed by the Dispute Resolution  
31 Manager for the disputing Party to the Dispute Resolution Manager for the other Party.

32  
33 25.3 The Dispute Resolution Managers shall have twenty-one (21) working days to  
34 resolve the dispute from the date of receipt of the written statement of dispute. The resolution of  
35 the dispute shall be memorialized in writing.

36  
37 25.4 The Parties shall diligently perform under this Agreement pending the  
38 completion of these dispute resolution procedures.  
39

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 22

1           25.5       If the Dispute Resolution Managers are unable to resolve the dispute within  
2 twenty-one working days of receipt of the written statement of dispute, the Parties may pursue  
3 whatever remedies they may have at law or equity.  
4

5           25.6       The timeframes set forth above for reporting and resolution of disputes may be  
6 extended by mutual agreement of the Parties and such agreement shall be memorialized in  
7 writing.  
8

### 9           **ARTICLE 26.   Survival and Benefit.**

10  
11           Continuing rights, interests and obligations of the Parties shall survive Closing as  
12 provided in this Agreement and the same shall inure to the benefit of and be binding upon the  
13 respective successors and assigns of the Parties. Nothing in this Agreement otherwise shall be  
14 construed as creating any rights of enforcement by any person or entity that is not a party hereto,  
15 nor any rights, interests or third party beneficiary status for any entity or person other than the  
16 Parties hereto.  
17

### 18           **ARTICLE 27.   Interpretation.**

19  
20           27.1       The headings and captions herein are inserted for convenient reference only  
21 and the same shall not limit or construe the paragraphs or sections to which they apply or  
22 otherwise affect the interpretation hereof.  
23

24           27.1.1     The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any  
25 similar terms shall refer to this Agreement, and the term “hereafter” shall mean after, and  
26 the term “heretofore” shall mean before, the date of this Agreement.  
27

28           27.1.2     Words of the masculine, feminine or neuter gender shall mean and  
29 include the correlative words of other genders, and words importing the singular number  
30 shall mean and include the plural number and vice versa.  
31

32           27.1.3     Words importing persons shall include firms, associations,  
33 partnerships (including limited partnerships), trusts, corporations and other legal entities,  
34 including public bodies, as well as natural persons.

35           27.1.4     The terms “include,” “including” and similar terms shall be construed  
36 as if followed by the phrase “without being limited to.”  
37

38           27.1.5     This Agreement shall be governed by and construed in accordance  
39 with Federal law and the laws of the State of California, provided, that in the event of a  
40 conflict between Federal law and the laws of the State of California, the Federal law shall  
41 govern.

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 23

1                   27.1.6       Whenever under the terms of this Agreement the time for performance  
2 of a covenant or condition falls upon a Saturday, Sunday or holiday observed by the  
3 performing party, such time for performance shall be extended to the next business day.  
4 Otherwise all references herein to "days" shall mean calendar days.  
5

6                   27.1.7       If any term or provision of this Agreement or the application thereof to  
7 any person or circumstance shall, to any extent, be invalid or unenforceable, the  
8 remainder of this Agreement, or the application of such term or provision to persons or  
9 circumstances other than those as to which it is held invalid or unenforceable, shall not be  
10 affected thereby, and each such term and provision of this Agreement shall be valid and  
11 be enforced to the fullest extent permitted by law.  
12

### 13                   **ARTICLE 28.   Non-Discrimination.**

14  
15                   The City covenants for itself, its successors and assigns, that it will comply with all  
16 applicable provisions of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of  
17 1973, and the Age Discrimination in Employment Act of 1975 in the use, occupancy, sale or  
18 lease of the Property. The foregoing shall not be construed to prohibit the operation of federal or  
19 state approved programs focusing on the special needs of the homeless, veterans, victims of  
20 domestic violence and other classes of persons at risk; not shall it be construed to prohibit  
21 employment practices not otherwise prohibited by law. The United States of America shall be  
22 deemed a beneficiary of this covenant without regard to whether it remains the owner of any land  
23 or interest therein in the locality of the Property hereby conveyed and shall have the sole right to  
24 enforce this covenant in any court of competent jurisdiction.  
25

### 26                   **ARTICLE 29.   Availability of Funds.**

27  
28                   29.1       The Government's obligations under this Agreement are subject to the  
29 availability of funds appropriated for such purpose. Nothing in this Agreement shall be  
30 construed as or constitute a commitment or requirement that the Government obligate or pay  
31 funds in contravention of the Antideficiency Act, 31 U.S.C. Section 1341, or that Congress, at a  
32 later time, will appropriate funds sufficient to meet deficiencies.  
33

34                   29.2       Actions of the City shall be governed by and subject to the provisions of  
35 California law relating to a general law city. Except for the City's recoupment obligations set out  
36 in Article 11 of this Agreement, there shall be no obligation for the payment or expenditure of  
37 money by the City under this Agreement unless the City first certifies that there is a valid  
38 appropriation from which the expenditure may be made and that unencumbered funds are  
39 available from the appropriation to the expenditure.  
40

### 41                   **ARTICLE 30.   Termination and Remedies for Nonperformance.**

## MCAS TUSTIN CONVEYANCE AGREEMENT

Page 24

1  
2       30.1       In the event a Party hereto fails to observe or perform any of its obligations  
3 under this Agreement or otherwise breaches the Agreement, after having been provided written  
4 notice and failing to cure the default within thirty (30) days after such notice, the other Party will  
5 be entitled to exercise any and all of the remedies for breach which are provided herein, as well  
6 as any other remedies to which the Party is entitled at law or in equity, including the right to  
7 terminate this Agreement and the LIFO.

8  
9       30.2       Failure by the City to accept the conveyance of a Parcel by Quitclaim Deed  
10 within thirty (30) days following Government execution of a FOST and tender of such Quitclaim  
11 Deed for such Parcel may be deemed a breach of this Agreement and the Government may  
12 exercise any available remedies, as set forth in paragraph 30.1 above. Notwithstanding the  
13 foregoing, the City shall not be liable for monetary damages if it does not accept conveyance of a  
14 Parcel in a timely manner as provided in this paragraph 30.2.

### 15 16       **ARTICLE 31.   Failure to Insist on Compliance.**

17  
18       The failure of either Party to insist, in any one or more instances, upon strict performance  
19 of any of the terms of this Agreement shall not be construed as a waiver or relinquishment of  
20 such Party's right to future performance of this Agreement, but the obligations of the other Party  
21 with respect to such future performance shall continue in full force and effect. Whenever the  
22 terms of this Agreement call for one Party to approve an action or make a determination before  
23 the other Party may undertake or perform such action, said approval or determination shall not be  
24 unreasonably denied or delayed.

### 25 26       **ARTICLE 32.   Modification; Waivers.**

27  
28       This Agreement, together with all exhibits hereto, contains the entire agreement and  
29 understanding of the parties in respect to the conveyance of the Property, and may not be  
30 amended, modified or discharged nor may any of its terms be waived except by an instrument in  
31 writing signed by the Parties. A waiver by a Party of a specific provision shall not be deemed a  
32 waiver of any other provision. The Parties hereto shall not be bound by any terms, conditions,  
33 statements, warranties or representations, oral or written, not contained herein.

### 34 35       **ARTICLE 33.   Counterparts.**

36  
37       This Agreement may be executed in multiple counterparts and/or with the signatures of  
38 the Parties set forth on different signature sheets and all such counterparts, when taken together,  
39 shall be deemed one original.  
40  
41

**ARTICLE 34. Utilities for Government Parcels.**

The City will take all reasonable steps necessary to transfer water, electric, sewer, natural gas and storm drain systems to the appropriate utility providers. To the maximum extent practicable, the City shall work with utility service providers other owners and prospective owners to facilitate the provision of water, electrical, and sewerage services to property retained by Government and/or transferred by public sale or via public benefit conveyances.

**[SIGNATURE PAGE FOLLOWS]**

